

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

David Barron,	:	
	:	Case No. 1:23-cv-591
Petitioner,	:	
	:	Judge Susan J. Dlott
v.	:	
	:	Order Deferring Ruling on Report and
Warden, Madison Correctional	:	Recommendation for Thirty Days
Institution,	:	
	:	
Defendant.	:	

This matter is before the Court on the Report and Recommendation issued by Magistrate Judge Peter B. Silvain, Jr. and a letter in response by Petitioner David Barron. (Docs. 8, 9.) The Magistrate Judge has recommended dismissing this action for failure to prosecute. For the reasons that follow, the Court will defer ruling on the Report and Recommendation for thirty days to give Petitioner one final chance to correctly file a habeas corpus petition.

I.

On September 15, 2023, Petitioner filed a pleading he titled a Writ of Habeas Corpus against the Warden of the Madison Correctional Institution alleging errors in his state court conviction. (Doc. 1.) The Magistrate Judge issued a Deficiency Order on September 20, 2023 requiring Petitioner to resolve two issues before the case could proceed. (Doc. 5.) First, Petitioner had to pay the filing fee or submit an application to proceed without the prepayment of fees. (Doc. 5 at PageID 12.) Second, he had to re-file his petition for writ of habeas corpus on the standard form, providing all of the relevant information and signing under penalty of perjury. (*Id.*) The Magistrate Judge also directed the Clerk of Court to send copies of the required forms to Petitioner to assist him. (*Id.* at PageID 13.)

Petitioner responded by timely paying the filing fee and filing an Application to Proceed *Without Prepayment of Fees* on the standard form. (Doc. 6.) He did not, however, re-file his petition for writ of habeas corpus on the form provided to him by the Clerk of Court.

The Magistrate Judge then issued a second Deficiency Order on October 27, 2023. (Doc. 7.) He ordered Petitioner “to fill out the standard form for a habeas corpus petition, sign it under penalty of perjury, and submit it to the Court” within thirty days. (*Id.* at PageID 20–21.) The Magistrate Judge also directed the Clerk of Court to again provide Petitioner with a blank copy of the standard habeas corpus form to make it easier for Petitioner to comply. (*Id.* at PageID 21.) Petitioner did not timely comply or make any additional filings before the November 27, 2023 deadline.

The Magistrate Judge then issued the Report and Recommendation on December 18, 2023 recommending that the Court dismiss this action without prejudice for failure to prosecute. (Doc. 8.) In response, Petitioner mailed a letter to the Court dated December 27, 2023 and filed on January 3, 2024. (Doc. 9.) The Court will treat this letter as objections to the Report and Recommendation. In the letter, Petitioner asks the Court “for compassion” and suggests that he did not timely comply with the Deficiency Orders because he suffered an injury to his knee on November 19, 2023, which required surgery and hospitalization until December 1, 2023. He then appears to ask for an extension of time until April 2024 to respond because he will be in a wheelchair until March 2024 and is unable to go to the law library.

II.

Petitioner has not explained why he did not timely comply with the first Deficiency Order, but the Court understands that his surgery and hospitalization could have interfered with his ability to timely comply with the second Deficiency Order. The Court will defer ruling on

the Report and Recommendation for thirty days to give Petitioner one final opportunity to comply with the requirements for filing a petition for writ of habeas corpus. **The Court ORDERS Petitioner to fill out the standard form for a habeas corpus petition, sign it under penalty of perjury, and submit it to the Court within thirty days of the date of this Order.** No additional extensions will be granted. To the extent Petitioner requests an extension of time until April 2024 to comply, that request is denied. The Court does not know of any reason why Petitioner requires access to a law library to complete, sign, and submit for filing a standard form for a habeas corpus petition.

To assist Petitioner, the Clerk of Court is **DIRECTED** to send him a blank copy of the standard form for a habeas corpus petition under 28 U.S.C. § 2254.

IT IS SO ORDERED.

BY THE COURT:

S/Susan J. Dlott
Susan J. Dlott
United States District Judge